

<b>Approval Level:</b>	Council
<b>Policy Type:</b>	Council
<b>Approval Date:</b>	17/06/2020
<b>Review cycle:</b>	Within 12 months of Council election
<b>Review Date:</b>	Review date of 2025
<b>Responsible Officer:</b>	Manager Safe and Healthy Environments
<b>Owner:</b>	Safe and Healthy Environments
<b>Responsible Director:</b>	Health and Wellbeing
<b>Relevant Legislation/Authority:</b>	<i>Planning and Environment Act 1987</i> <i>Building Act 1993</i> <i>Road Management Act 2004</i> <i>Crown Land (Reserves) Act 1978</i> <i>Local Government Ac 1989</i> <i>Land Act 1958</i>  <i>City of Greater Bendigo Compliance Policy</i> <i>Greater Bendigo City Council Community Local Law</i>
<b>PolicyDOCSETID:</b>	4348098

## 1. PURPOSE

- 1.1 The purpose of this policy is to provide a functional framework for managing and removing encroachments from the public realm to ensure compliance with the relevant legislation, manage public risk and to facilitate consistent decision making.
- 1.2 This policy seeks to:
- 1.2.1 ensure all Roads, Road Reserves and land within the City and under the City's control is free from any impediments to the unrestricted and safe passage of people and goods;
  - 1.2.2 provide a fair and balanced approach to the use of public space;
  - 1.2.3 ensure encroachments do not create risks to public safety;
  - 1.2.4 facilitate effective risk management;
  - 1.2.5 ensure the City satisfies its legal obligations;

- 1.2.6 ensure consistency with legislative requirements, City and other governmental policies;
- 1.2.7 preserve public spaces in the public domain for the public benefit; and
- 1.2.8 retain Bendigo's identity, character and form.

## **2. BACKGROUND**

2.1 Bendigo is renowned for its historic and beautiful parks and colourful plantings on median strips, roundabouts and garden beds. The City has a vision to become the world's most liveable community and is constantly designing, constructing and enhancing a range of facilities to achieve this vision. It is the City's role to maintain and beautify these aspects through effective planning controls.

2.2 The City has experienced numerous instances where private land has progressively encroached on City managed land through gradual illegal extensions, placement of structures, storage and extensions of fencing. Some of these encroachments may appear to only have a minor impact on public land, but encroachments have the ability to:

- 2.2.1 diminish the appearance of public land and facilities;
- 2.2.2 prevent City employees from carrying out maintenance and works;
- 2.2.3 cause poor drainage;
- 2.2.4 isolate land from public access and use;
- 2.2.5 negatively impact biodiversity;
- 2.2.6 present a risk to public safety;
- 2.2.7 impede fire management;
- 2.2.8 create legal liability issues; and
- 2.2.9 encumber City resources and assets.

2.3 For the reasons set out in clause 2.2, it is imperative that all encroachments are carefully assessed and regulated to mitigate risk and safeguard sustainable development for the future.

## **3. SCOPE**

This policy applies to all Roads, Road Reserves and land under the City's control within the City's boundaries. Encroachments over private land, such as private roads, are not covered by this policy.

## **4. DEFINITIONS**

In this policy:

**Act** means the *Local Government Act 1989* (Vic).

**City** means the Greater Bendigo City Council.

**Encroachment** means unlawful interference, use of, or intrusion on, another's land.

**Occupation** means an approved interference, use of, or intrusion on, another's land.

**Road** means:

- (a) a street;
- (b) a right of way;
- (c) any land reserved or proclaimed as a street or road under the *Crown Land (Reserves) Act 1978* (Vic) or the *Land Act 1958* (Vic);
- (d) a public road under the *Road Management Act 2004* (Vic);
- (e) a passage;
- (f) a by-pass;
- (g) a bridge or ford;
- (h) a footpath, bicycle path or nature strip; and
- (i) any culvert or kerbing or other land or works forming part of the road.

**Road Reserve** means all area of the land that is within the boundaries of a road, including but not limited to:

- (a) nature strips;
- (b) roadsides;
- (c) drains;
- (d) verges;
- (e) shoulders; and
- (f) roadways.

## 5. PRINCIPLES

5.1 The City's general position regarding compliance activities is that all compliance activities undertaken by the City will be in accordance with the City's Compliance Policy, and be:

5.1.1 outcome based rather than punitive; and

5.1.2 where appropriate, provide opportunities for timely and appropriate corrective action to be taken.

6. POLICY

6.1 Classification and management of encroachments

6.1.1 Encroachment Priority Rating Matrix

- a) The City will utilise the Encroachment Priority Rating Matrix (**‘Matrix’**) below and the Operational Response Tool set out in 6.3.2 to establish the decision making process and provide criteria for a strategic and consistent approach to managing various forms of encroachments.

<b>Spatial Extent</b>	<b>LARGE</b> ( > 50m <sup>2</sup> )	<b>B</b>	<b>A</b>	<b>A</b>
	<b>MODERATE</b> ( 10m <sup>2</sup> - 50m <sup>2</sup> )	<b>C</b>	<b>B</b>	<b>A</b>
	<b>SMALL</b> ( < 10m <sup>2</sup> )	<b>C</b>	<b>C</b>	<b>B</b>
		<b>LOW</b>	<b>MEDIUM</b>	<b>HIGH</b>

**Level of Risk**

(For definition and examples of level of risk refer to table in 6.1.2)

6.1.2 Operational Response Tool

- a) Based on the letter obtained through the use of the Matrix, the following table sets out the conditions and actions which have been developed to guide the appropriate remedy of an unauthorised encroachment.

Class	Priority	Definition and Examples	Operational Response	Response/Action
<b>A</b>	<b>High Priority</b>	<p>Potential 'Critical' or 'Major' impact on people, non-natural environment, natural environment or reputation.</p> <p>Examples: Death or significant hospitalisation likely Irreversible ecosystem contamination National/State reputation damage</p>	Act or refer as first priority to reduce the risk in accordance with the Compliance Policy.	Complete removal of encroachment or approval of occupation with acceptable risk.
<b>B</b>	<b>Medium Priority</b>	<p>Potential 'Moderate' impact on people, non-natural environment, natural environment or reputation.</p> <p>Examples: Medical treatment GP/hospital likely Long term repair of ecosystem Regional reputation damage Accessibility limited</p>	Act or refer as second priority to reduce the risk in accordance with the Compliance Policy.	Complete removal of encroachment or approval of occupation with acceptable risk.
<b>C</b>	<b>Low Priority</b>	<p>Potential 'Minor' or 'Insignificant' impact on people, non-natural environment, natural environment or reputation.</p> <p>Examples: First Aid treatment likely Limited impact on plants/animals Local reputation damage Accessibility not impeded</p>	Act or refer as third priority to reduce the risks in accordance with the compliance policy and monitor situation.	Encroachment noted and recorded for monitoring or approval of occupation with acceptable risk.

## 6.2 Identification of encroachments

6.2.1 Each time an alleged encroachment is reported or identified, the City will undertake the following main steps:

- a) Staff observation, receipt of complaint or advice concerning encroachment
- b) Record the potential encroachment in the customer request system
- c) Establish the ownership details of the land subject to the encroachment
- d) Establish the role of the City with respect to the ownership of the land
- e) Where the City has a role, apply section 6.1 Classification and Management of Encroachments to determine *Priority Rating* and *Operational Response Priority*.
- f) Where an *Operational Response* of High or Medium priority is established, this outcome must be validated through collaboration with other relevant staff
- g) Record *Priority Rating* and *Operational Response Priority* and validation (if relevant) in the customer request system

- h) Implement the policies *Operational Response* and *Response/Action*

### 6.3 Approvals and conditions

#### 6.3.1 'Low Priority' encroachments

- a) After thoroughly assessing the encroachment in person and through using the tools in 6.1.1 and 6.1.2 of this policy, if it is in the opinion of the City that a permission can be provided, that permission shall be granted in such a way as to give due regard to the following:
- (i) The parties to the agreement
  - (ii) Address of parties to the agreement
  - (iii) The land subject to the agreement
  - (iv) Term (timelines)
  - (v) Purpose
  - (vi) Public Liability Insurance
  - (vii) Conditions of permission
- (b) any approval granted must:
- (i) Indemnify the City of Greater Bendigo from possible claims
  - (ii) Negate potential adverse possession claims
  - (iii) Be at no expense to the City of Greater Bendigo
- (c) Approvals may be subject to Section 173 agreements on land titles.

#### 6.3.2 'Medium and High Priority' encroachments

- a) No permits shall be granted to encroachments classed as Medium or High Priority with unacceptable risks.

- 6.4 This policy must be read in conjunction with relevant legislation and adopted City policies and guidelines.

## 7. ROLES AND RESPONSIBILITIES

### 7.1 Council

It is the role of Council to adopt the City's Encroachment policy.

## 7.2 City of Greater Bendigo employees.

The Manager Safe Healthy Environments is responsible for the administrative review of this policy and all associated reporting to Council. All staff have a responsibility to ensure that they adhere to this policy and report any breaches of this policy. The consequence of not complying with this policy could mean a potential breach of the City's Code of Conduct.

## 8. RELATED DOCUMENTS

Readers are encouraged to access relevant documents and/or resources which are available as per the below.

These include:

The *Planning and Environment Act 1987 (Vic)*, *Building Act 1993 (Vic)*, *Road Management Act 2004 (Vic)*, *Greater Bendigo City Council Local Laws* and the *City of Greater Bendigo Compliance Policy* are the primary pieces of legislation/documents relevant to encroachment on City owned or managed land.

Further information or advice on this policy should be directed to Safe and Healthy Environments

## 9. HUMAN RIGHTS COMPATIBILITY

The implications of this policy have been assessed in accordance with the requirements of the Victorian Charter of Human Rights and Responsibilities.

The key principles of the Charter are to ensure that the policy, plan or procedure does not limit, restrict or interfere with any of the rights contained in the Charter.

There is a human rights trigger regarding "property rights". However, the Enforcement Policy applies only to land owned or managed by Council and does not allow the acquisition, seizure or forfeiture of land that is not owned or managed by Council.

## 10. ADMINISTRATIVE UPDATES

It is recognised that, from time to time, circumstances may change leading to the need for minor administrative changes to this document. Where an update does not materially alter this, such a change may be made administratively. Examples include a change to the name of a City unit, a change to the name of a Federal or State Government department, and a minor update to legislation which does not have a material impact. However, any change or update which materially alters this document must be made through consultation with the staff Consultative Committee and with the approval of EMT or where required, resolution of Council.

## 11. DOCUMENT HISTORY

Date Approved	Responsible Officer	Unit	Change Type	Version	Next Review Date
July 2019	CG	Safe & Healthy Environments	Develop	1	TBD

19/03/2021	RM	Legal Services	Admin. Updates (upload to SharePoint)	3	2025
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